

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:

ANTWON B. DAY, an unmarried man,

FXPIPSESSION, LLC, an Arizona limited
liability company,

Respondents.

DOCKET NO. S-21175A-21-0409

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, AND ORDER FOR
ADMINISTRATIVE PENALTIES

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Antwon B. Day and FXPIPSESSION, LLC have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division also alleges that Antwon B. Day is a person controlling FXPIPSESSION, LLC within the meaning of A.R.S. § 44-1999(B), so that he is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as FXPIPSESSION, LLC for its violations of the antifraud provisions of the Securities Act.

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

RESPONDENTS

2. Antwon B. Day ("Day") has been a resident of El Mirage, Arizona, since at least 2017.
3. Day has never been registered with the Commission as a securities salesman or dealer.
4. FXPISESSION, LLC ("FX") is a manager-managed Arizona limited liability company organized by Day on or around May 15, 2020.
5. Day has been a manager and member of FX since May 15, 2020.
6. FX has never been registered with the Commission as a securities salesman or dealer.
7. FX operated in El Mirage, Arizona, from May 15, 2020, until December 2, 2020.
8. FX was dissolved by Day on or around December 2, 2020.
9. Day and FX may be referred to collectively as "Respondents."

III.

FACTS

10. On or around October 7, 2020, Day caused FX to enter into a "Loan Partnership Agreement" ("Agreement") with an Arizona resident ("Investor").
11. After being introduced to Day by a mutual acquaintance, the Investor participated in several videoconference calls with Day.
12. Day verbally represented to the Investor that the Investor's funds would be used to trade in the foreign exchange market.
13. Prior to the execution of the Agreement, Day falsely told the Investor that he was "licensed" and had a "Series 7."
14. On October 7, 2020, Day emailed the Agreement he drafted to the Investor.
15. The Agreement identified the Investor as "partner."
16. Pursuant to the Agreement, the Investor agreed to "loan" FX \$100,000.
17. Regarding repayment, the Agreement provided that FX would pay the Investor 310% within 120 days. The "payout date" was specified as February 6, 2021.

1 18. The Agreement also stated, "The principal amount and profit will be deposited to the
2 partner [sic] bank account via Zelle transfer, Check, Venmo, BTC, Cash or Cash App."

3 19. Regarding the Investor's participation, the Agreement provided, "Partner is loaning
4 the company and therefore will not be involved in the operations of the project, will not be
5 consulted during the project, and will not have any responsibility or authority in making any
6 decisions during the project."

7 20. The Investor was never a manager or employee of FX, and never had any authority
8 to make business decisions on behalf of FX.

9 21. The Agreement also permitted "early withdrawal" as follows: "If a funding partner
10 needs to withdraw from the deal once the project has begun, a 30-day written notice must be given
11 to sufficiently replace their Partnership with another. If funds are withdrawn prematurely, only the
12 principal will be returned to the funding partner without any profit proceeds."

13 22. The Agreement was not registered with the Commission as a security.

14 23. On October 7, 2020, the Investor transferred 9.427851 Bitcoin to Day. At that time,
15 the market value of the Bitcoin was approximately \$100,000.

16 24. Respondents used a portion of the proceeds from the Agreement on Day's personal
17 expenses.

18 25. Approximately one week after the Investor entered into the Agreement, he requested
19 the return of his principal. However, Day did not return the Investor's principal.

20 26. On January 19, 2021, Day sent a proposed amendment ("Amendment") to the
21 Agreement to the Investor.

22 27. The Amendment purported to be an amendment to the Agreement, but the
23 Amendment was between the Investor and "Fxpipsession ltd" rather than FX.

24 28. The Amendment purported to change the "payout date" from February 6, 2021, to
25 May 6, 2021, "Do to a slower then a normal quarter . . ." [sic].
26

29. The Amendment did not disclose that Respondents used a portion of the proceeds from the Agreement on Day's personal expenses.

30. The Amendment did not disclose that as of December 2, 2020, FX had been dissolved and it no longer had any assets.

31. The Amendment falsely stated that the amended "payout date" was the only revision.

32. Respondents did not disclose to the Investor that Day was the subject of a 2019 civil judgment for \$7,378 as a result of failing to repay a loan.

33. None of the funds paid by the Investor to FX have been returned to him.

IV.

VIOLATION OF A.R.S. § 44-1841

(Offer or Sale of Unregistered Securities)

34. From on or about October 7, 2020, Respondents offered and sold a security in the form of an investment contract and evidence of indebtedness, within or from Arizona.

35. The security referred to above was not registered pursuant to Articles 6 or 7 of the Securities Act.

36. This conduct violates A.R.S. § 44-1841.

V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

37. Respondents offered or sold a security within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

38. This conduct violates A.R.S. § 44-1842.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

39. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

- a) Day caused FX to enter into the Agreement, which represented that the Investor would be paid \$310,000 within 120 days, but omitted that Day was recently the subject of a judgment for failing to repay a loan;
- b) Day caused FX to enter into the Agreement, which falsely represented that the Investor would be able to withdraw his principal upon request;
- c) Day falsely represented to the Investor that he was "licensed" and had a "Series 7";
- d) Day sent the Amendment to the Investor which stated the payout date was the only change, but the Amendment was between the Investor and "Fxpipsession ltd," not FX;
- e) Day sent the Amendment to the Investor which extended the payout date "Do to a slower then a normal quarter . . ." [*sic*], but did not disclose that FX had already been dissolved and no longer had any assets; and
- f) Day and FX misappropriated certain proceeds obtained from the Investor pursuant to the Agreement.

40. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

14. From at least May 15, 2020, through at least December 2, 2020, Day was and/or held himself out as a manager of FX.

15. From at least May 15, 2020, through at least December 2, 2020, Day directly or indirectly controlled FX within the meaning of A.R.S. § 44-1999. Therefore, Day is jointly and severally liable to the same extent as FX for its violations of A.R.S. § 44-1991 from at least May 15, 2020, through at least December 2, 2020.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona

1 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the
2 Commission's website at <http://www.azcc.gov/hearing>.

3 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin
4 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the
5 parties, or ordered by the Commission. If a request for a hearing is not timely made, the Commission
6 may, without a hearing, enter an order granting the relief requested by the Division in this Notice of
7 Opportunity for Hearing.

8 Persons with a disability may request a reasonable accommodation such as a sign language
9 interpreter, as well as request this document in an alternative format, by contacting Carolyn D.
10 Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov.
11 Requests should be made as early as possible to allow time to arrange the accommodation.
12 Additional information about the administrative action procedure may be found at
13 <http://www.azcc.gov/securities/enforcement/procedure>.

14 **X.**

15 **ANSWER REQUIREMENT**

16 Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting
17 Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket
18 Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within
19 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from
20 Docket Control by calling (602) 542-3477 or on the Commission's Internet website at
21 <http://www.azcc.gov/hearing>.


22 Additionally, the answering Respondent must serve the Answer upon the Division.
23 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-
24 delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix,
25 Arizona, 85007, addressed to Chris Nichols.

1 The Answer shall contain an admission or denial of each allegation in this Notice and the
2 original signature of the answering Respondent or Respondent's attorney. A statement of a lack of
3 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
4 denied shall be considered admitted.

5 When the answering Respondent intends in good faith to deny only a part or a qualification
6 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
7 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

8 The officer presiding over the hearing may grant relief from the requirement to file an
9 Answer for good cause shown.

10 Dated this 29th day of December, 2021.

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13 Wendy Coy
14 Assistant Director of Securities
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